

## Serial Number 221/1937.



**THE SHIPPING CASUALTY RULES 1937.**

Enacting authority : The Minister of Marine.

Act pursuant to which the regulations were made : Section 244 of the Shipping and Seamen Act, 1908.

Date on which the regulations were made : 2nd day of September, 1937.

Date of notification in *Gazette* : 9th day of September, 1937.

R U L E S .

SHORT TITLE, COMMENCEMENT, AND REVOCATION.

1. These rules may be cited as the Shipping Casualty Rules 1937.
2. These rules shall come into force on the day following notification in the *Gazette* of the making hereof.
3. The Shipping Casualties Rules 1906\* are revoked.
4. These rules shall so far as practicable and unless otherwise expressly provided apply to all matters arising in any investigation or proceeding pending on the coming into force hereof as well as to all investigations or proceedings instituted on or after the coming into force hereof, and accordingly all acts of authority and acts of parties originating under the rules hereby revoked and of continuing effect at the time of the coming into force of these rules shall enure for the purposes of these rules as if they had originated under these rules, and shall, where necessary, be deemed to have so originated.

INTERPRETATION.

5. In these rules, unless the context or subject-matter otherwise requires,—

- “ Court ” means the Supreme Court, Stipendiary Magistrate, Justices, or other authority empowered to hold an investigation :
- “ Investigation ” means a formal investigation into a shipping casualty :
- “ List of Assessors ” means the List of Assessors approved by the Minister for shipping casualties :
- “ Minister ” means the Minister of ~~Marine~~ ;
- “ Person ” includes a corporation sole, and also a body of persons, whether corporate or unincorporate
- “ Secretary ” means the Secretary for ~~Marine~~ and includes any officer for the time being acting in that capacity :
- “ Superintendent ” means a Superintendent of Mercantile Marine, Collector of Customs, or any other officer discharging the duty of Superintendent of Mercantile Marine.

\* *Gazette*, 5th April, 1906, Vol. I, page 941.

## NOTICE OF INVESTIGATION.

6. When an investigation has been ordered, the Minister or Superintendent may cause a notice, to be called a notice of investigation, to be served upon the owner, master, and officers of the ship, as well as upon any person who in the opinion of the Minister or Superintendent ought to be served with such notice. The notice shall contain a statement of the questions which, on the information then in the possession of the Minister or Superintendent, he intends to raise on the hearing of the investigation, and shall be in the Form No. 1 in the Schedule hereto, with such variations as circumstances may require. The Minister or Superintendent may, at any time before the hearing of the investigation, by a subsequent notice, amend, add to, or omit any of the questions specified in the notice of investigation.

7. The Minister, Superintendent, owner, master, and any certificated officer or other person upon whom a notice of investigation has been served shall be deemed to be parties to the proceedings.

8. Any other person may, by leave of the Court, appear, and any person who appears under this rule shall thereupon become a party to the proceedings.

## NOTICE TO PRODUCE.

9. A party may give to any other party notice in writing to produce any documents (saving all just exceptions) relating to the matters in question which are in the possession or under the control of such other party; and, if the notice is not complied with, secondary evidence of the contents of the documents may be given by the party who gave the notice.

## NOTICE TO ADMIT.

10. A party may give to any other party notice in writing to admit any documents (saving all just exceptions), and in case of neglect or refusal to admit after such notice, the party so neglecting or refusing shall be liable for all the costs of proving the documents, whatever may be the result, unless the Court is of opinion that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice has been given, except where the omission to give the notice has, in the opinion of the officer by whom the costs are taxed, caused a saving of expense.

## EVIDENCE.

11. Affidavits and statutory declarations may, by permission of the Court, and saving all just exceptions, be used as evidence at the hearing.

## PROCEEDINGS IN COURT.

12. At the time and place appointed for holding the investigation the Court may proceed with the investigation, whether the parties upon whom a notice of investigation has been served, or any of them, are present or not.

13. The proceedings on the investigation shall commence with the production and examination of witnesses by the Minister or Superintendent. These witnesses, after being examined on behalf of the Minister or Superintendent, may be cross-examined by the parties in such order as the Court may direct, and may then be re-examined on behalf of the Minister or Superintendent. Questions

asked, and documents tendered as evidence in the course of the examination of these witnesses, shall not be open to objection merely on the ground that they do or may raise questions which are not contained in, or which vary from, the statement of the case, or questions specified in the notice of investigation, or subsequent notices referred to in Rule 6.

14. When the examination of the witnesses produced by the Minister or Superintendent has been concluded, the Minister or Superintendent shall state in open Court the questions in reference to the casualty, and the conduct of the certificated officers or other persons connected therewith, upon which the opinion of the Court is desired. In framing the questions for the opinion of the Court the Minister or Superintendent may make such modifications in, additions to, or omissions from the questions in the notice of investigation or subsequent notices referred to in Rule 6 as, having regard to the evidence which has been given, the Minister or Superintendent may think fit.

15. After the questions for the opinion of the Court have been stated, the Court shall proceed to hear the parties to the investigation upon and determine the questions so stated. Each party to the investigation shall be entitled to address the Court and produce witnesses, or recall any of the witnesses who have already been examined for further examination, and generally adduce evidence. The parties shall be heard and their witnesses examined, cross-examined, and re-examined in such order as the Court shall direct. The Minister or Superintendent may also produce and examine further witnesses, who may be cross-examined by the parties, and re-examined by the Minister or Superintendent.

16. When the whole of the evidence in relation to the questions for the opinion of the Court has been concluded, any of the parties who desire so to do may address the Court upon the evidence, and the Minister or Superintendent may address the Court in reply upon the whole case.

17. The Court may adjourn the investigation from time to time and from place to place, and where an adjournment is asked for by a party to the investigation or by the Minister or Superintendent, the Court may impose such terms as to payment of costs or otherwise as it may think just as a condition of granting the adjournment.

18. Except when the certificate of an officer is cancelled or suspended, in which case the decision shall always be given in open Court, the Court may deliver the decision of the Court either *viva voce* or in writing, and if in writing it may be sent or delivered to the parties. In the latter case it shall not be necessary to hold a Court merely for the purpose of delivering the decision of the Court.

19. The Court may order the costs and expenses of the investigation, or any part thereof, to be paid by the Minister or by any other party. An order for payment of costs shall be in the Form No. 2 in the Schedule, with such variations as circumstances may require.

20. At the conclusion of the investigation the Court shall report to the Minister. The report shall be in the Form No. 3 in the Schedule, with such modifications as circumstances may require.

#### COPY OF REPORT WHEN CERTIFICATE AFFECTED.

21. The Minister shall, on application by any party to the proceedings and on payment of the cost of making the copy (such cost to be fixed by the Minister), give him a copy of the report made to the Minister.

## APPEALS.

22. Every appeal under section 243 of the Shipping and Seamen Act, 1908, and section 39 of the Shipping and Seamen Amendment Act, 1909, shall be conducted in accordance with the conditions and regulations following, namely :—

- (a) The appellant shall, within the time hereinafter mentioned, serve on such of the other parties to the proceedings as he may consider to be directly affected by the appeal notice of his intention to appeal, and shall also, within seven days after setting down the appeal, give to the said parties notice of the general grounds of the appeal.
- (b) Notice of appeal shall be served within twenty-one days from the date on which the decision is pronounced.
- (c) If the appeal is brought by any party other than the Minister, the appellant shall, before the appeal is heard, give such security, if any, by deposit of money or otherwise, for the costs to be occasioned by the appeal as the Court from whose decision the appeal is brought on application made to it for that purpose may direct.
- (d) The appellant shall, before the expiration of the time within which notice of appeal may be given, leave with the Registrar of the Supreme Court a copy of the notice of appeal, and the Registrar shall thereupon set down the appeal by entering it in the proper list.
- (e) The Supreme Court shall be assisted by not less than two assessors, to be selected from persons approved from time to time by the Minister, as assessors for the purpose of formal investigations into shipping casualties under the Shipping and Seamen Act, 1908.
- (f) The Supreme Court may, if it thinks fit, order any other person, other than the parties served with the notice of appeal, to be added as a party or parties to the proceedings for the purposes of the appeal, on such terms with respect to costs and otherwise as the Supreme Court may think fit. Any party to the proceedings may object to the appearance on the appeal of any other party to the proceedings as unnecessary.
- (g) The evidence taken before the Court from whose decision the appeal is brought shall be proved before the Supreme Court by a copy of the notes of the Court, or of the shorthand-writer, clerk, secretary, or other person authorized by him to take down the evidence, or by such other materials as the Supreme Court thinks expedient; and a copy of the evidence, and of the report to the Minister containing the decision from which the appeal is brought, and of the notice of the general grounds of the appeal, shall be left with the Registrar of the Supreme Court before the appeal comes on for hearing. For the purpose of this rule, copies of the notes of the evidence, and of the report, shall be supplied to the appellant, on request, by the Court or person having charge thereof on payment of the usual charge for copying.

- (h) The Supreme Court shall have full power to receive further evidence on questions of fact, such evidence to be either by oral examination in Court, by affidavit, or by deposition taken before an examiner or commissioner. Evidence may also be given with special leave of the Supreme Court as to matters which have occurred since the date of the decision from which the appeal is brought.
- (j) The Supreme Court shall have power to make such order as to the whole or any part of the costs of and occasioned by the appeal as the Court may think just.
- (k) Subject to the foregoing provisions of this rule, every appeal shall be conducted under and in accordance with the general rules and regulations applicable to ordinary proceedings before the Supreme Court; but there shall not be anything in the nature of pleadings other than the notice of the general grounds of the appeal, except by special permission of the Supreme Court.
- (l) On the conclusion of an appeal the Supreme Court shall send to the Minister a report of the case in such form as the Supreme Court may think fit.

#### REHEARINGS BY ORDER OF THE MINISTER.

23. (a) Where the Minister directs a rehearing under section 243 of the Shipping and Seamen Act, 1908, he shall cause such reasonable notice to be given to the parties whom he considers to be affected by the rehearing as the circumstances of the case may, in his opinion, permit.

(b) The provisions distinguished as (e), (f), (g), (h), (j), (k), and (l) of the last foregoing rule shall apply to a rehearing as if it were an appeal, and as if the Court or authority before whom the rehearing takes place were the Supreme Court.

#### APPOINTMENT OF ASSESSORS.

24. The ~~Secretary~~ shall compile a List of Assessors and submit the list to the Minister for approval, and may at any time with the like approval add or withdraw the name of any person to or from the list, and the list so approved from time to time shall be the List of Assessors within the meaning of these rules. Every person on the list shall be a master mariner who has had command of a sailing ship, a master mariner who has had command of a steamship, or an engineer holding an engineer's certificate of the first class, and the qualifications in this respect of each person listed shall be set out in the list.

25. Subject to these rules assessors for investigations into shipping casualties shall be appointed by the Minister from the List of Assessors.

26. If any investigation involves or appears likely to involve the cancelling or suspension of the certificate of a master, mate, or engineer, there shall be appointed from the List of Assessors not less than two assessors.

27. Subject to any special appointment or appointments which the Minister may think it expedient to make in any case where special circumstances appear to him to require a departure from these rules

(the requirements of the last preceding rule being always complied with), assessors shall be appointed as follows :—

- (i) Where the investigation involves or appears likely to involve the cancelling or suspension of the certificate of a master or mate, but not of an engineer, at least two assessors shall be appointed who are master mariners.
- (ii) Where the investigation involves or appears likely to involve the cancelling or suspension of the certificate of a master or mate of a sailing ship, one at least of the assessors shall be a master mariner who has had command of a sailing ship; and where the investigation involves or appears likely to involve the cancelling or suspension of the certificate of a master or mate of a steamship, one at least of the assessors shall be a master mariner who has had command of a steamship.
- (iii) Where the investigation involves or appears likely to involve the cancelling or suspension of the certificate of an engineer, one at least of the assessors shall be an engineer holding an engineer's certificate of the first class.
- (iv) Where the formal investigation relates solely to matters connected with the engineers of a ship, or with the engine-room, there shall be two assessors, each of whom shall be the holder of an engineer's certificate of the first class.

**28.** The Secretary shall inform the Minister when assessors are required, and shall state which of the assessors in the List of Assessors ought, in his opinion, to be appointed.

**29.** An appointment made by the Minister of any assessor or assessors for an investigation shall not be open to question on the ground that it was not in accordance with these rules, or does not give full effect to the requirements of these rules.

#### COMPUTATION OF TIME.

**30.** In computing the number of days within which any act is to be done they shall be reckoned exclusive of the first and inclusive of the last day, unless the last day shall happen to fall on a Sunday, Christmas Day, or Good Friday, or on a day appointed for a public holiday, in which case the time shall be reckoned exclusive of that day also.

#### SERVICE OF NOTICES.

**31.** Any notice, summons, or other document issued under these rules may be served by sending the same by registered letter to the last known address of the person to be served.

**32.** The service of any notice, summons, or other document may be proved by the oath or affidavit of the person by whom it was served.

#### PUBLICATION OF RULES.

**33.** A copy of these rules shall be kept at every Customhouse and mercantile marine office in New Zealand, and any person desiring to peruse them shall be entitled to do so.

#### FORMS.

**34.** The forms in the Schedule shall be used, as far as possible, with such alterations as circumstances may require, but no deviation from the prescribed forms shall invalidate the proceedings unless the Court shall be of opinion that the deviation was material.

## SCHEDULE.

*Form No. 1.—Notice of Investigation.*

To . . . . ., master, mate, engineer, owner, &c., of . . . . . or . . . . .  
 belonging to the ship " . . . . .," of . . . . .

I HEREBY give you notice that a formal investigation has been ordered into the circumstances attending the . . . . . and that subjoined hereto is a copy of a report [*or* statement of the case] upon which the said investigation has been ordered. I further give you notice to produce to the Court [your certificate, the log-books of the vessel, and] any [other] documents relevant to this case which may be in your possession.

I have further to give you notice that on the information at present obtained by the Minister [*or* Superintendent] the questions annexed hereto are those upon which it appears desirable, and upon which it is proposed to take the opinion of the Court; but these questions will be subject to alteration, addition, omission, or amendment by the representative of the Minister [*or* Superintendent] at the investigation after the witnesses called by the Minister [*or* Superintendent] have been examined.

Dated this . . . . . day of . . . . ., 19..

. . . . ., Superintendent.

- I. *Report* [*or Statement of Case*].  
 II. *Questions*.

1. Whether the [*Here insert the proposed questions*].

*Form No. 2.—Order on a Party for Payment of Costs of Investigation.*

In the matter of a formal investigation held at . . . . . on the [*Here state all the days on which the Court sat*] days of . . . . ., before . . . . ., assisted by . . . . ., into the circumstances attending the . . . . .

The Court orders—

(1) That A.B., of . . . . ., do pay to the Minister the sum of . . . . . pounds being [on account of] the expenses of this investigation.

*Or* (2) That the Minister do pay to A.B., of . . . . ., the sum of . . . . . pounds being [on account of] the expenses of this investigation.

Given under my hand, this . . . . . day of . . . . ., 19..

. . . . ., Stipendiary Magistrate *or* Justices.

*Form No. 3.—Report of Court.*

In the matter of a formal investigation held at . . . . ., on the [*Here state all the days on which the Court sat*] days of . . . . ., before . . . . ., assisted by . . . . ., into the circumstances attending the . . . . .

THE Court, having carefully inquired into the circumstances attending the above-mentioned shipping casualty, finds, for the reasons stated in the annex hereto, that the [*Here state finding of the Court*].

Dated this . . . . . day of . . . . ., 19..

. . . . ., Stipendiary Magistrate *or* Justices.

We [*or* I] concur in the above report.

. . . . ., Assessor.  
 . . . . ., Assessor.

*Annex to the Report.*

[*Here state fully the circumstances of the case, the opinion of the Court touching the causes of the casualty, and the conduct of any persons implicated therein, and whether the certificate of any officer is either suspended or cancelled, and, if so, for what reasons.*]